(b) Review by Government on the working of the Company. [Placed in Library. *See* No. LT—7115/88 for (a) and (b)].

Report and Accounts (1987-88) of the Central Council for Research in Homoeopathy, New Delhi and related papers

THE MINISTER OF STATE IN THE MINISTRY OF HEALTH AND FAMILY WELFARE (KUMARI SAROJ KHAPARDE): Madam, I beg to lay on the Table a copy each (in English and Hindi) of the following papers:—

(i) Annual Report and Accounts of the Central Council for Research in Homoeopathy, New Delhi, for the year 1987-88, together with the Audit Report on the Accounts.

(ii) Review by Government on the working of the Council. [Placed in Library. *See* No. LT—7052/88 for (i) and (ii)].

Report and Accounts (1985-86) of the Gujarat Agro Industries Corporation Limited, Ahmedabad and related papers

SHRI HARI KRISHNA SHASTRI: Madam, I beg to lay on the Table—

I. A copy each (in English and Hindi) of the following papers, under sub-section (1) of section 619A of the Companies Act, 1956:—

(i) Seventeenth Annual Report and Accounts of the Gujarat Agro Industries Corporation Limited, Ahmedabad, for the year 1985-86, together with the Auditors' Report on the Accounts and the comments of the Comptroller and Auditor General of India thereon.

(ii) Review by Government on the working of the Corporation.

II. Statement (in English and Hindi) giving reasons for the delay in laying the paper mentioned at I(i) above. [Placed in Library. *See* No. LT—7128/88 for I and II]

SPECIAL MENTIONS

Requirement of ratification of the Constitution (Sixty-second Amendment) Bill, 1988, by State Legislatures

SHRI LAL K. ADVANI (Madhya Pradesh): I am grateful to the Chair for having allowed me to separate this particular aspect of the Bill relating to electoral reforms from the debate itself. I am happy also that though the Union Minister is not here, the Minister of State for Law is present when I am making this special mention.

The Law Minister has said that after this Bill is passed by both the Houses of Parliament—I am referring to the Sixty-second Amendment—by the requisite majority, it would have to go to the States for ratification by at least not less than half the total number of States. My submission is that this is a misconceived interpretation of Article 368. As a result of this interpretation, the authority of this House—which in case of Article 326 is absolute—being abridged.

I have before me Article 368 which has two parts. The first part relates to the process how an amendment to the Constitution is to be passed by both Houses. The requisite majority etc. is mentioned therein. Part (2) comprises a proviso which says and I quote:

"Provided that if such amendment seeks to make any change in—

(a) article 54, article 55, article 73, article 162 or article 241, or

(b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or

(c) any of the Lists in the Seventh Schedule, or

(d) the representation of States in Parliament, or

(e) the provisions of this article," i.e. article 368.

In all these five categories of cases the amendment would need ratification by not less than half of the States. My submission is that Article 326, which we are seeking to amend, does not come within the ambit of any of these five sub-clauses. It is not mentioned specifically and even indirectly it does not come in.

The utmost, I presume and I assume I do not know, someone in the Law Ministry, some officer in the Law Ministry might have stated that subsection (d) namely, the representation of States in Parliament is being changed. I do not see how the representation of States in Parliament is being changed. It is not being changed at all. Therefore, my submission, Madam, is that this amendment becomes law, the moment it is passed by the two Houses of Parliament and assented to by the Presiment. The 18-year-old young men and women should not have to wait for 3 or 4 months more or five months more till half the Assemblies have ratified it.

Madam, I would not have brought this matter up had my view not been reinforced by the Supreme Court judgement. Way back in 1965 there was a Bill, the Seventeenth Amendment of the Constitution which was passed by the two Houses of Parliament by the requisite majority and, then, it was assented to by the President. It amended article 31A and 31B. After that there was a writ petition in the Supreme Court saying that this should be struck down because the requisite ratification by at least half the States was not there. The argument given was that when the Fundamental Rights are changed the High Court's authority is abridged, indirectly and because the High Court's authority is abridged, therefore, this should have been ratified by at least half the States. An elaborate judgement has been given in which the interpretation of article 368 and the interpretation of the proviso to article 368 has been dealt with. I do not want to read out the whole, it is just not possible particularly in a special mention, but briefly I would say that Justice Gajendragadkar, Justice Wanchoo and Justice Raghuvir Dayal have summed up the whole thing saying that "the broad scheme of article 368 is that if Parliament proposes to amend any provision of the Constitution not enshirined in the proviso, the procedure prescribed by the main part of the article has to be followed." Then, it goes on to say that "if the effect of the amendment made in the Fundamental Rights on the powers of the High Courts prescribed by article 226 is indirect, incidental or is otherwise of an insignificant nature, it may be that the proviso will not apply."

Now, this kind of categoric judgement given in the Sajjan Singh case applies completely to the preqsent case and even more so because this is not even incidental, not even indirect. In this case the representation of States in Parliament is not at all going to be affected. Firstly, the representation of the Lok Sabha is not guided by the number of voters. By virtue of our own amendment, we will be only increasing the number of voters, whereas the Constitution says that the composition of the House of the People is on the basis of population and not on the basis of the number of voters. Similarly, the composition of the Assemblies is on the basis of the population and not on the basis of number of voters and, therefore, the Assemblies are also being constituted on the basis of the population. The Rajya Sabha or the Upper House which are on the basis of the Assembly members are not going to be affected; even if they were to be affected when that particular amendment is brought, only then a ratification is needed; otherwise no ratification is needed.

[Shri Lal K. Advani]

Madam, I would seek the indulgence of the Law Minister if he is convinced by the arguments I have given and thinks that no ratification by the States is necessary, he could make an announcement; then, the matter is over. But if he is not convinced by my argument, then, I think, it is a fit case when Parliament should be allowed to seek the advice of the Attoreny-General. The Attorney-General should be asked to come to the House. The Chairman can do it. Under article 88, the Attorney General has the right to attend the Parliament to address the Parliament, to guide the Parliament, to advise the Parliament . I would seek that the Chairman advise the Attorney-General to come to Parliament and tell us what are the implications. I would not claim to be an expert on law, on legal matters on Constitutional matters, as my learned friend, Shri Shiv Shanker is or Shri Bhardwaj is. But my humble understanding of law gave me this interpretation and gave me this insight into Article 368. I was surprised when I consulted several legal luminaries of eminent standing, of excellent, outstanding merit in the country. They also endorsed by view and said, youd understanding is quite right. In case of lowering of voting age, amendment of Article 326 is necessary and when the necessary Act is passed by Lok Sabha and by Rajya Sabha and assented to by the President, immediately, every young man and women in the country of 18 years gets the right to vote. There is no question of going to the States for ratification. So, my submission is that either the Law Minister clarifies the position and if he agrees to my submissions, I woud be satisfied. He can take his own time. If he disagrees with it, I would request the Chair to examine my submission and if they appeal to the Chair, let the Attorney General be invited to attend the House tomorrow which happens to be the last day of the Session and before this House passes the Bill, the Attorney General should give us the benefit of his legal advice on this matter. Thank you.

SHRI M. S. GURUPADASWAMY (Karnataka): Madam Deputy Chairman, I will not take much time of the House. Much of the ground on this issue has already been covered by my colleague, Advani Ji. I take advantage of the presence of the Leader of the House, Mr. P. Shiv Shanker. He was a judge himself and an advocate. Article 368 of the Constitution deals with amendment of the Constitution. Here in this case there seems to be misappreciation or may I say, genuine misunderstanding on the part of the Government on this issue. The Government seems to have taken a stand that this matter, this Constitution amendment after pasing should be ratified by 50 per cent of the State Legislatures. It is very clear. (*Interruption*).

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS (SHRI M. M. JACOB): Madam, normally, I am not against the Members expressing their opinion on this particular subject. We are actually debating the same constitutional amendment and the same Representation of People (Amendment) Bill, 1988, in this House and the Members would have enough time to speak on that. We are now going to that only. Special mentions are not allowed on a subject matter which is already under discussion in the House. I do not know how it came, madam. (*Interruption*).

SHRI M. S. GURUPADASWAMY: May I say, Madam, this is a very important issue. (*Interruption*). We are drawing your attention. What is it? This is a constitutional matter. Are you not interested in clarifications at least? My fear is, it may be submerged in the general debate. Therefore, this is a matter to be decided in consultation with the Government.

THE DEPUTY CHAIRMAN: Mr. Gurupadaswamy, just a minute. Mr. Advani and you all had a talk with the Chairman and Mr. Advani was asked to make a special mention and he did it. If the Government want to react, in whatever way they want to react and the Chair wants to react, they will do it. Now, we have a very heavy business today and if everybody is going to speak the same thing... (*Interruption*).

SHRI M. S. GURUPADASWAMY: We are debating this issue. That is why we are raising a separate issue.

THE DEPUTY CHAIRMAN: Your party is going to have a chance to speak. You have already made your submissions. They can talk about it in the debate and their speeches. (*Interruptions*).

SHRI M. S. GURUPADASWAMY: We are not disagreeing with you at all. we have been makeing the point that this provision does not require ratification by the State Legislatures through a resolution.

THE DEPUTY CHAIRMAN: Now, the Minister wants to react. Let him react.

SHRI M. S. GURUPADASWAMY: I welcome it. This misunderstanding should be cleared by him. I will be very happy if he clears it.

THE MINISTER OF STATE IN THE MINISTRY OF LAW AND JUSTICE (SHRI HANS RAJ BHARDWAJ): Madam, I think this discussion is highly premature. We are discussing the Constitution Aemndment as such. And the points made by Mr. L. K. Advani have been noted. He wants consultation of either the Attorney-General or other legal luminaries. That is a point besides the present one. We are discussing the Constitution Amendment on which there is a consensus of the House that it should be passed. All these points which they are making are highly premature because they relate to the stage after passing the Bill. We have to take note of the debate as a whole. There can be no piecemeal question whether it requires ratification or not. It is a matter of common sense that if it does not require ratification, nobody will send it for that. Whether it requires ratification is not precisely a factual aspect. It is a legal aspect.

SHRI M. S. GURUPADASWAMY: The Government has already taken a stand.

SHRI LAL K. ADVANI: What the Law Minister says shows that the Government has an open mind. The Law Minister, earlier in his statement, said...

SHRI HANS RAJ BHARDWAJ: I have made it clear. So far as the contentions of Mr. Advani are concerned, I have noted them down. They want a premature assurance. That is never done in a debate. Hon. Members can say whatever they want to during the debate. That will be replied to. That will be the stand of the Government.

SHRI M. S. GURUPADASWAMY: I will take it that he will reply to this issue at the time of his reply.

SHRI PARVATHANENI UPENDRA (Andhra Pradesh): Madam, I want to raise a different issue. (*Interruptions*).

SHRI LAL K. ADVANI: Unless it is corrected that it was an erroneous impression, we will seek the Attorney-General's opinion.

THE DEPUTY CHAIRMAN: Mr. Advani, you are a very senior Member of the House and you know. I myself am not a lawyer as you are not. But I would say, the Minister has reacted to it. Let him have some time to understand it. You have made your point. That is all right. I think now we can go ahead with the other things. It is for the Government to decide.

SHRI PARVATHANENI UPENDRA: I want to raise a different issue for the Minister's information. On that day, the Minister said in the other House—the Election Commission also gave a statement yesterday—that after the States ratify, the Bill gets the President's assent and again section 19 of the Representation of the People Act, 1950 will have to be amended. My question is: When the Constitution prevails over every other Act, why can't you put in the Constitution Bill 'notwithstanding anything contained in any other Act'? Or section 19 also could have been amended straight now subject to Article 326 of the Constitution. *(Interruptions)*. You could have put it in the Representation of People (Amendment) Bill.

SHRI HANS RAJ BHARDWAJ: Madam, I am making this submission. very clear. So far as the point made by Mr. Advani are concerned, I have noted them down and I am going to reply at the conclusion of the debate. That will satisfy Members.

SHRI PARVATHANENI UPENDRA: What about my point?

SHRI HANS RAJ BHARDWAJ: What is your point? *(Interruptions)*.

SHRI PARVATHANENI UPENDRA: Will it have to come to Parliament again for amendment of section 19 of the R. P. Act?

SHRI HANS RAJ BHARDWAJ: Madam, I am asking this submission. Any point regarding these two Bills can be raised during the debate. I will note it down and make a full reply. If there is any hon. Member who is not satisfied, I will try to satisfy him at that time. This is not the time to raise this issue.

THE DEPUTY CHAIRMAN: I am sure the Minister has understood your point and he will give the reply as he has told you. I think we can go ahead with the second special mention.

Need to increase quota of Edible Oil to Maharashtra

SHRI VISHWASRAO RAMRAO PATIL (Maharashtra): Madam Deputy Chairman, through you, I want to raise a most important issue which is about the increase in allocation of imported edible oil to the State of Maharashtra by the Central Government. The State of Maharashtra is a deficit State so far as edible oil is concerned. In Maharashtra, groundnut oil is the main cooking medium and the requirement of this oil is mostly met from other surplus States like Gujarat, Tamil Nadu, Karnataka, etc. through normal trade channels. The monthly allocation of imported edible oil till July, 1988, was to the extent of 10,000 to 11,000 metric tonnes. From August 1988 onwards the Central Government have increased the allotment by 2500 metric tonnes and a total of 13,500 metric tonnes has now been allotted by the Central Government.

Madam, Maharashtra State is the most urbanised State in the country where about 35 per cent of the population lives in the cities. The requirement of this urban agglomeration would be estimated at 7,000 metric tonnes per month if the allocation is kept at 2 kg. per card holder and the requirement of the rural areas will be about 10,600 metric tonnes per month in case we get monthly allocation of 1 kg. per card holder. This the total requirement of this State is 18,000 metric tonnes.

It will be seen from the above that the allocation from the Central Government is much less than the requirement of this State. Many difficulties are experienced while receiving the monthly allocation from the Central Government.

Madam, I, therefore earnestly request the Food and Civil Supplies Minister to go through the various problems of the Maharashtra State